MCCOMMONS OIL CO.

IBLA 95-5 Decided January 30, 1997

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming the issuance of incidents of noncompliance. SDR 94-040.

Reversed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance--Oil and Gas Leases: Production

   Departmental regulations at 43 CFR Part 3160 governing onshore oil and gas operations and assessments or penalties for noncompliance with such regulations are not applicable to a private oil and gas lease which was in existence at the time the United States acquired an undivided percentage mineral interest in the lands covered by the lease. The fact that the lease was included in a unit with other private leases 20 years prior to the United States' acquisition of its interest does not make it subject to BLM's jurisdiction under 43 CFR 3161.1(b), when there is no evidence that the unit contains Federal leases or that it was Federally approved.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for appellant; Arthur Arguedas, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

McCommons Oil Company (McCommons) has appealed from an August 18, 1994, decision of the Acting Deputy State Director, Resource Planning, Use, and Protection, New Mexico State Office, Bureau of Land Management (BLM), affirming the issuance of five incidents of noncompliance (INC's) relating to an oil and gas lease in Wise County, Texas.

The parties are not in dispute regarding the factual background of this case. Those facts are as follows:

> In 1959, Borden Seaberry and the heirs of Knox Montgomery entered into an oil and gas lease with R. W. Widener covering

> their mineral interest in four tracts of land comprising approximately 243 acres in Wise County, Texas. McCommons Oil Company is the successor to R. W. Widener. * * * By Designation of Pool dated December 15, 1959, McCommons formed a 296-acre unit and the Montgomery Heirs #1 well was completed on the unit in 1960. The well has been continuously produced since 1960, in conformance with all applicable regulations of the Texas Railroad Commission.
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> Borden M. Seaberry owned an undivided 23.7654% mineral interest in the tracts covered by McCommons' oil and gas lease (¼ less 3 mineral acres). Seaberry apparently defaulted on a mortgage to the Farmers Home Administration and, in settlement of that debt, Seaberry's widow conveyed all of the estate's mineral interest in the four tracts (and in other lands) to the United States, by deed dated August 21, 1979. Thus, the interest of the United States in these lands constitutes an isolated, undivided interest in minerals and not property acquired for a government program.

(Statement of Reasons (SOR) at 1-2).

First the General Services Administration and then BLM, starting in 1985, administered the United States' mineral interest. In a letter dated March 10, 1987, BLM thanked McCommons for its assistance in completing BLM's records regarding the "Montgomery Heirs Tract in Wise County, Texas." In that letter, BLM stated that it understood that "the U.S.A. holds a 25 percent interest in the mineral estate, and that this interest is currently held by your company under the terms of the previously issued private lease agreement." Further, BLM assigned No. TX NM-A 68588 to "this lease interest" and requested that McCommons refer to that number in any correspondence with it or Minerals Management Service.

On July 13, 1994, a BLM inspector visited the well site for the Montgomery Heirs #1 well and issued five INC's to McCommons alleging various violations of the oil and gas operations regulations in 43 CFR Part 3160, including failure to have a seal on the sales valve of a storage tank.

In a letter dated July 29, 1994, seeking State Director review of the INC's, McCommons did not question the merits of the INC's. Instead, it argued that the lease was a private lease and that the minor mineral interest of the United States should not subject McCommons to "BLM's additional bonding, record keeping, and lease maintenance requirements or require us to obtain a BLM drilling permit should we desire to drill a second well * * *."

In the decision appealed from, BLM stated that McCommons was the operator of "Lease TXNM 68588" and summarily affirmed the issuance of the INC's, citing section 17 of the lease as stating that "the development of and production from each such unit shall be in accordance with

the valid orders, rules and regulations of the Texas Railroad Commission or other lawful authority, either Federal or State, having jurisdiction in the premises."

McCommons appealed and filed a petition for stay contending that it would face immediate costs in order to abate the violations cited in the INC's for which it would not be reimbursed if a stay were not granted. In an order dated October 20, 1994, the Board denied the petition for stay, finding that the obligations imposed by BLM to abate the INC's were not unreasonable, that the potential risk of harm to the Federal royalty share caused by an unsealed valve was significant and outweighed any burden McCommons might be required to bear if a stay were not granted, and that the public interest favored protection of the Federal royalty.

After reviewing the case record and the pleadings filed by the parties, we conclude that the position espoused by McCommons is clearly correct. The BLM decision must be reversed.

[1] McCommons points out that it is text book real property law that a party acquiring an interest in real property takes that interest subject to all prior burdens and encumbrances. Similarly, it argues, a party who acquires a mineral interest takes that interest subject to the terms of any preexisting oil and gas lease, whether that party is the United States or a private party. McCommons asserts the mere fact the United States acquired its mineral interest in payment of a debt does not convert the private lease, to which the mineral interest is subject, to a Federal lease subject to Federal oil and gas operations regulations.

When the United States acquired the mineral interest in 1979, it took that interest subject to the existing private lease. That lease, which is still in existence, is not a "lease," as that term is defined in the oil and gas operations regulations at 43 CFR 3160.0-5(f). 1/ That regulation defines "[l]ease" as "any contract, profit sharing agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas."

The Board has stated that the oil and gas operations regulations at 43 CFR Part 3160 "detail the duties required of an operator of a Federal onshore oil and gas lease." Chevron U.S.A. Inc., 128 IBLA 146, 147 (1994). The 1959 private oil and gas lease under which McCommons produces minerals, including minerals owned by the United States, was not "issued or approved by the United States."

This Board has held, however, that the onshore oil and gas operations regulations may be applied beyond the boundaries of a Federal oil and gas

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1/ That definition mirrors the definition for "lease" set forth in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1702(5) (1994).

lease in certain circumstances. Norfolk Energy, Inc., 115 IBLA 265 (1990); Tricentrol United States, Inc., 97 IBLA 387, 389 (1987), aff'd sub nom. Norfolk Energy, Inc. v. Hodel, No. 87-188-GF-PGH (D. Mont. Sept. 26, 1988), aff'd, 898 F.2d 1435 (9th Cir. 1990). In Tricentrol at 389-94, the Board interpreted regulations published in 1984 governing onshore Federal and Indian oil and gas lease operations in light of the passage of FOGRMA and concluded that those regulations applied to facilities located on private leases which participated with Federal and/or Indian leases under a unit agreement approved by the Department's authorized officer. In Norfolk Energy, the Board construed the language of 43 CFR 3161.1(b), promulgated in 1987, to mean that "State or privately-owned mineral lands committed to a Federally approved unit agreement are subject to the Federal regulations governing onshore oil and gas operations in 43 CFR Part 3160." Norfolk Energy, 115 IBLA at 267; see 43 CFR 3180.0-1. 2/ There is no evidence in the record that the Montgomery Heirs #1 Unit, which was formed pursuant to the pooling authority of the lease, is such a unit. 3/ In this case, the United States' acquisition of a mineral interest committed to the pool does not support invocation of jurisdiction by BLM pursuant to 43 CFR 3161.1(b). The United States acquired its mineral interest subject to the pooling agreement. The existence of that agreement cannot, as McCommons states, "bootstrap" BLM into authority over McCommons' operations on the private lease (Appellant's Answer to BLM's Response at 2).

McCommons finds support for its position in a May 2, 1983, memorandum from the Associate Solicitor, Energy and Resources, to the Eastern States Director, BLM, which is included in the appendix to the BLM Manual Handbook on oil and gas lease issuance. Therein, the Associate Solicitor addressed the question whether the mineral leasing laws and regulations, including 30 CFR Part 221 (now 43 CFR Part 3160) could be applied to private oil and gas leases on lands acquired by the United States in the Wayne National Forest in Ohio. He concluded that they could not. Therein, the Associate Solicitor explained:

> As a purchaser of land subject to an existing leasehold the government's rights are limited. Where a lessor sells his interest

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2/ The regulation at 43 CFR 3161.1 defines the jurisdiction of the oil and gas operations regulations. Subsection (b) thereof provides:

"Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary."

3/ McCommons represents that all the leases in the unit are fee oil and gas leases. BLM does not allege that there are any Federal leases in the unit.

> in the leasehold, the purchaser steps onto the shoes of the lessor and acquires no greater nor lesser rights in the lease than the prior lessor had. 4 Summers, Oil and Gas, § 652 (1962). Thus, the fact that the purchaser is the government does not automatically make the leases subject to current government regulations. Instead the government must step in and administer the leases under the same rights and limitations the prior lessor possessed. Under the leases acquired by the government, the rights and limitations to which the government has acceded would be only those which flow from the terms of the leases themselves or the common law rights created by the lessor-lessee relationship.

(Memorandum at 2).

Unlike the situation involving the leases discussed in the Associate Solicitor's memorandum, where the United States acquired the lands covered by the leases, in this case the United States merely acquired an undivided interest in minerals. Thus, while the Associate Solicitor discussed the appropriate use of the surface by the lessee to develop the mineral estate in the Ohio leases, the United States does not own any interest in the surface of the lands where the Montgomery Heirs #1 well is located and has no authority to regulate use of the surface. The authority of the United States is limited to verification of production and royalty payments. However, that authority arises from state law, not Federal regulation, because the lease is not Federal lease. See Memorandum at 8.

BLM had no basis for issuing the INC's in question. The lease in question is a private lease and is not subject to this Department's onshore oil and gas operations regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge